



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೩ Part -III	ಬೆಂಗಳೂರು, ಸೋಮವಾರ, ೦೨, ನವೆಂಬರ್, ೨೦೨೦ (ಕಾರ್ತಿಕ, ೧೧, ಶಕವರ್ಷ, ೧೯೪೨) BENGALURU, MONDAY, 02, NOVEMBER, 2020 (Karthika, 11, SHAKAVARSHA, 1942)	ನಂ. ೫೧೪ No. 514
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PERSONNEL AND ADMINISTRATIVE REFORMS SECRETARIAT

NOTIFICATION

No.DPAR 04 CHUTHAA 2020, Bengaluru, Dated: 5th August, 2020.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi.

Dated: 24th July, 2020
2 Shravana, 1942 (Saka)

NOTIFICATION

No. 82/KT-HP/01/2019:- in pursuance of section 106 (a) of the Representation of the People Act, 1951(43 of 1951), the Election Commission of India hereby publishes the judgement/order of the High Court of Karnataka dated 17th January, 2020 in Election Petition No.01/2019.

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JANUARY 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

ELECTION PETITION NO.1 OF 2019

BETWEEN:

SRI A MANJU
S/O LATE ANNAIAH GOWDA,
AGED ABOUT 61 YEARS,
R/AT HANYALU VILLAGE,
ANANDUR POST,
ARKALGUD TALUK,
HASSAN DISTRICT-573102.

...PETITIONER

(BY SRI: GURUMATH GANGADHAR, SENIOR ADVOCATE A/W
SRI: M R VIJAYAKUMAR, ADVOCATE)

AND:

1. SRI. PRAJWAL REVANNA @ PRAJWAL R
S/O H D REVANNA,
AGED ABOUT 28 YEARS,
R/AT NO.43,
PADAVALAHIPPE VILLAGE & POST,
KASABA HOBLI,
HOLENARASIPURA TALUK,
HASSAN DISTRICT-573211.
2. SRI K.H. VINOD RAJ
S/O HANUMANTHAIHAH,
AGED ABOUT 29 YEARS,
R/AT NO.562/2,

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AMBEDKAR NAGAR,
KONANURU, ARKALGUD TALUK,
HASSAN DISTRICT-573102.

3. SRI H.M. CHANDREGOWDA
S/O SRI MALLALIGOWDA,
AGED ABOUT 65 YEARS,
NO.54, HONASHATTIHALLI,
SRINIVASAPURA POST,
CHANNARAYAPATNA TALUK,
HASSAN DISTRICT-573211.
4. M MAHESH @ LOKESH
S/O LATE SRI H.C. MANJAPPA SHETTY,
AGED ABOUT 49 YEARS,
R/AT DOOR NO.349,
SAISADANA,
HEMAVATHINAGAR,
NEAR CHANNAMBIKA THEATRE,
HOLENARASIPURA TALUK,
HASSAN DISTRICT-573211.
5. SRI R G SATISHA
S/O LATE SRI GOWDEGOWDA,
AGED ABOUT 48 YEARS,
R/AT RAMADEVARAPURA VILLAGE,
YELGUNDA POST,
SALAGAMI HOBLI,
HASSAN DISTRICT-573219.

...RESPONDENTS

(BY SRI: UDAYA HOLLA, SENIOR ADVOCATE A/W
SRI: M.KESHAVA REDDY, ADVOCATE FOR R1;
SMT: AKKAMAHADEVI HIREMATH, ADVOCATE FOR R2;
SRI: A.MANJUNATHA & SRI: NAGESHA.K., ADVOCATES FOR R3;
R-4 SERVED-UNREPRESENTED
SRI: MAHESH R.UPPIN, ADVOCATE FOR R5)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, BY SRI.A.MANJU, PETITIONER-CANDIDATE A/W HIS COUNSELS SRI. M.R.VIJAYAKUMAR, SRI.SUNIL M.V. AND SRI.KOTRAIAH B. PRASADIMATH (ADVOCATES FOR PETITIONER) BEFORE THE REGISTRAR (JUDICIAL) ON 26.06.2019, (THE PROCEEDINGS OF REGISTRAR (JUDICIAL) IS AT PAGE NO.1 OF THE PETITION), CHALLENGING THE ELECTION OF RESPONDENT NO.1, RETURNED CANDIDATE SRI.PRAJWAL REVANNA @ PRAJWAL R FROM-16 HASSAN (GENERAL) PARLIAMENTARY CONSTITUENCY HELD IN THE YEAR 2019 AND THE PETITIONER PRAYS THIS HON'BLE COURT TO:-

- a) CALL FOR ENTIRE RECORDS PERTAINING TO THE ELECTION OF 16 HASSAN (GENERAL) PARLIAMENTARY CONSTITUENCY HELD ON 18.04.2019 AND DECLARED ON 23.05.2019.
- b) DECLARE THE ELECTION OF THE RETURNING CANDIDATE NAMELY 1ST RESPONDENT TO 16 HASSAN (GENERAL) PARLIAMENTARY CONSTITUENCY HELD ON 18.04.2019 DECLARED ON 23.05.2019 BY RETURNING OFFICER VIDE ANNEXURE-F AND F1 AS NULL AND VOID ON ACCOUNT OF FILING FALSE AFFIDAVIT.
- c) DECLARE THE PETITIONER AS DULY ELECTED IN THE ABOVE MENTIONED ELECTION FROM 16 HASSAN (GENERAL) PARLIAMENTARY CONSTITUENCY AS A RETURNING CANDIDATE BY SECURING 2ND HIGHEST VOTE AND
- d) PASS ANY OTHER APPROPRIATE ORDER/S AS THIS HON'BLE COURT DEEMS FIT AND PROPER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS ELECTION PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In an Election Petition filed under section 81 of the Representation of People Act, 1951 challenging the election of respondent No.1 to the 16 – Hassan (General) Parliamentary Constituency held on 18.04.2019, respondent No.1 – the returned candidate has filed I.A.No.7/2019 under Order 7 Rule 11 and section 151 of the Code of Civil Procedure, 1908 read with section 86(1) of the Representation of People Act, 1951 seeking dismissal of the Election Petition for non-compliance of Section 81(3) of the Representation of People Act, 1951 (hereinafter referred to as the "RP Act").

2. The grounds urged in support of the application are set out in para 5 of the affidavit appended to the said application, which read as under:-

(a) That the election petition served on the counsel of this respondent No.1 is not signed by the petitioner as well as advocate for the petitioner as true copy on the presentation form as well as index, synopsis and the memorandum of election petition including the verifying affidavit.

(b) That the advocate for the petitioner has only put his signature at Page Nos.32, 34, 35, 36, 37, 40, 42, 49 to 64, 66 to 77, 79 to 81, 83 to 86, 88 to 94 to 97, 100, 105, 106, 107, 110, 113, 116, 118 to 120, 122 to 127, 131, 133 to 136, 138, 140, 141, 142, 144, 145, 147 to 151, 155 to 158, 160 to 169, 171 to 180, 182 to 192, 196 to 201 of the above election petition but not as true copy.

(c) That the advocate for the petitioner has not signed on the documents at page Nos.128 and 129 which is part of translated copy of Annexure-N5.

(d) That the petitioner has alleged that this respondent is guilty of corrupt practices but the petitioner has not filed the affidavit in the format prescribed i.e., Form No.25 enumerating the instances of events which amounts to corrupt practice, which is mandatory under section 83 of the Act r/w Rule 94A of the Conduct of Election Rules 1961.

(e) That the petitioner has produced documents pertaining to the firms, M/s.Adikarah Ventures LLP and M/s.Drone Workforce LLP, as Annexures-G & H and it is seen that the figure 25% is written in hand against the name of this respondent. On the other hand the same documents downloaded today from the official website are produced in the statement of objection filed by this respondent to the above

election petition as Annexure R1-1 and R1-2 respectively. These documents do not show the name of this respondent as a partner. So the documents at Annexure-G & H are not the true copy of their originals but the said Annexure - G & H are tampered and falsified the said documents to mislead this honourable court which is a very serious matter to be taken note of by this honourable court and to take deemed actions against the petitioner under the appropriate provisions of law.

3. It is contended that, in view of the provisions of sections 81 and 83 of the RP Act, the election petition is not a valid petition in the eye of law and that because of non-compliance of the mandatory provisions of the Act, respondent No.1 is not in a position to take a proper defence and is prejudicially affected and therefore, the election petition is liable to be dismissed at the threshold as per section 86(1) and proviso to section 83(1) of the RP Act.

4. This application is opposed by the election petitioner by submitting a detailed statement of objections *Inter alia* contending,

(i) That the application in question is not maintainable in view of the judicial order passed by this Court on 26.07.2019 recording compliance of the requirement of sections 81 and 82 of the RP Act read with rule 10 of the Election Petition Procedure Rules.

(ii) The election petition was registered by the registry after ensuring compliance of section 81(3) of the RP Act.

(iii) The contention raised in the petition raises serious doubt about the exact copy of the election petition which is said to be received by the first respondent from the registry. Prima facie it appears to be a case of tampering the records by the first respondent which needs to be investigated, both under the provisions of Indian Penal Code and Contempt of Courts Act.

(iv) Section 81(3) of the RP Act requires only the petitioner to attest as "true copy" of the petition under his own signature. Petitioner has attested the petition as well as copies of the petition furnished to the first respondent with the following words:

"This is the correct copy of the Election Petition."

This attestation is in complete compliance of section 81(3) of the RP Act.

(v) *The Index and Synopsis do not form part of the election petition as provided under section 83 of the RP Act and hence, non-attestation of Synopsis and Index do not violate the requirements of section 81(3) of the RP Act.*

(vi) *Insofar as the contention urged in the petition that the allegations made in the election petition are not followed by an affidavit in Form No.25 is concerned, the first respondent failed to appreciate the reference to corrupt practice with correct perspective inasmuch as the petitioner has simply alluded to the judgment of the Hon'ble Supreme Court in the case of KRISHNAMOORTHY vs. SIVAKUMAR & Others in (2015) 3 SCC 467, wherein the Hon'ble Supreme Court was pleased to hold that non-disclosure of assets and sources of income of candidate and his associates amounts to corrupt practice, but not in the sense in which the first respondent has understood the corrupt practice.*

(vii) *Insofar as the allegation that the documents at Annexures-G and H are tampered and fabricated in comparison with Annexures-R1-1 and R1-2, it is contended that the documents at Annexures-G and H and R1-1 and R1-2 firstly pertain to two different points of time, the former was the copy downloaded as on the date of scrutiny of the nomination i.e., on 27.03.2019 and the latter was downloaded by*

respondent No.1 on 04.11.2019 and in a time span of almost eight months, changes may have occurred for various reasons. It is contended that Annexures-G and H are genuine and bona fide documents and the allegation of fabrication and tampering are desperate responses of the first respondent fearing that he would loose his elected seat on account of his own suicidal act of filing false affidavit along with his nomination.

5. Thus, the petitioner has sought for dismissal of the application as not maintainable, with exemplary costs.

6. I have heard Sri.M.R.Vijaya Kumar, learned counsel for election petitioner and Sri.Udaya Holla, learned Senior Counsel appearing on behalf of Sri.M.Keshava Reddy, learned counsel for respondent No.1.

7(i) Referring to the various defects highlighted in the affidavit and placing reliance on the decision of the Hon'ble Supreme Court of India in the case of *SHARIF-UD-DIN vs. ABDUL GANI LONE* in (1980) 1 SCC 403, Sri.Udaya Holla, learned Senior Counsel emphasized that sub-section (3) of section 81 of the Act provides that a copy of the petition shall

be attested by the petitioner "under his own signature" to be a true copy of the petition. The emphasis in the above provision is on the words "under his own signature". Section 94 of the Act requires the High Court to dismiss an election petition when the petitioner has not complied with the provisions of section 83. He laid emphasis on the following portion of the above judgment extracted hereinbelow:

"The object of requiring the copy of an election petition to be attested by the petitioner under his own signature to be a true copy of the petition is that the petitioner should take full responsibility for its contents and that the respondent or respondents should have in their possession a copy of the petition duly attested under the signature of the petitioner to be the true copy of the petition at the earliest possible opportunity to prevent any un-authorized alteration or tampering of the contents of the original petition after it is filed into court. Sometimes records in the court have been tampered with notwithstanding the care and caution taken by courts. It is probably to obviate any scope for such an allegation being made or to protect the interest of the respondent, the legislature thought of enacting sub-section (3) of Section 89 of the Act so that the respondent may rely on the copy served on him

when he finds that the original document in the court contains allegations different from those in the copy in his custody. A respondent would not have the same degree of assurance if a copy served on him is one attested by any person other than the petitioner himself. The attestation by the advocate for the petitioner cannot be treated as the equivalent of attestation by the petitioner under his own signature. If the requirement of the second part of Section 89(3) that copy of the petition should contain the signature of the petitioner himself is not one of substance, there was no need to enact it as the first part of sub-section (3) of Section 89 of the Act would have been sufficient for it provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the word "copies" mentioned therein can only mean "true copies". The importance of the provisions contained in Section 94 of the Act which makes it obligatory on the part of the High Court to dismiss a petition when it is established that Section 89 of the Act had not been complied with also cannot be overlooked in this context.

20. We are, therefore, of the view that the requirement that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own

signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in Section 94 of the Act. The High Court was, therefore, right in dismissing the petition on the above ground."

(underlining supplied)

7(ii) Further, referring to another decision of this Court in the case of *B.R.PATIL vs. RAJEEV CHANDRASHEKAR & Others* in *ILR 2007 Kar 317* with reference to Rule 94A of the Conduct of Election Rules, 1961, learned Senior Counsel pointed out that, as per the above provision, the requirement of filing an affidavit in Form No.25 is mandatory and failure to comply with this requirement would entail dismissal of the petition. On the same point, learned Senior Counsel has placed reliance on the decision of the Hon'ble Bombay High Court in the case of *PURUSHOTTAM vs. RETURNING OFFICER, Amravati & Others* reported in *AIR 1992 Bombay 227*.

8. Refuting the above submissions, learned counsel appearing for the election petitioner referred to the Constitution Bench decision of the Hon'ble Supreme Court in the case of

Ch.SUBBARAO vs. MEMBER, ELECTION TRIBUNAL, HYDERABAD & Others, AIR 1964 SC 1027 to drive home the point that the petitioner has substantially complied with the requirement of section 81(3) of the RP Act and therefore, the election petition cannot be dismissed at the threshold as sought for by respondent No.1. Learned counsel countered each of the defects highlighted by respondent No.1 in the affidavit filed in support of the application and pointed out that the petitioner has subscribed his signature on every page of the election petition as well as on the copies furnished to respondent No.1 and that the election petition has been duly verified as required under sections 81 and 82 of the RP Act. The Act does not require the election petitioner to sign the index or synopsis which are not integral part of the election petition and as such, the election petitioner has not violated any of the mandatory provisions of the RP Act. Further, meeting the contention of the learned counsel for respondent No.1 regarding non-submission of Form No.25 is concerned, learned counsel submitted that the question of filing Form No.25 would arise only if the corrupt practice, as envisaged under section 123 of the RP Act are alleged in the

election petition. It is the submission of the learned counsel that, in the instant case, the allegations made in the petition fall within the purview of section 33A of the RP Act. Petitioner has not alleged any corrupt practice within the meaning of section 123 of the RP Act and therefore, non-submission of Form No.25 does not vitiate the election petition nor does it furnish a ground to respondent No.1 to seek dismissal of the petition on that ground.

9(i) This particular submission canvassed by the learned counsel for election petitioner is seriously contested by the learned Senior Counsel Sri.Udaya Holla who has drawn my attention to the plea taken by the election petitioner in paragraphs 32 and 38 of the election petition wherein the petitioner has pleaded as under:-

"32. The Apex Court in the case of Lokaprahari, through its General Secretary S.N. Shukla v/s Union of India and others held that the information to the voter with regard to the source of income of the candidate and their associates would certainly help the voter to make an informed choice of the candidate to represent the constituency and

therefore, it is a part of the fundamental right under Article 19(1)(a) relaying upon the judgment of *Krishnamurthy V/s Shivakumar and other* (2015)3 SCC 467. The Apex Court held at para 64 that the non-disclosure of assets and sources of income of candidate and their associates would constitute a corrupt practice falling under heading undue influence as defined under section 123(a) of RP Act of 1951. Further the Apex Court observed:

'In the light of the foregoing discussion, the information such as the one required under the above mentioned prayer is certainly relevant information in the context of disqualification on the ground of undue accretion of assets therefore, we see no objection for granting the relief as prayed for;'

'We are left with the reliefs sought for by way of prayer No.5 in LA No. 8 of 2016. The petitioner seeks Form 26 be amended to provide certain further information. An analysis of the information sought (as can be seen from the prayer) indicates that till the information is in the context of statutory prescribed disqualification under RP act of 1951. In our opinion, such information would certainly be relevant and necessary for a voter to make an appropriate choice at the time of

the election whether to vote or not in favour of a particular candidate. Therefore, all the six prayers made in LA.No.8 are allowed."

38. The election of the 1st respondent is illegal, null and void since there was improper acceptance of his nomination which has materially affected the result of the returned candidate, namely, 1st respondent in view of Section 100(1)(d)(i) of the RP Act 1951."

9(ii) Further, referring to the proviso to section 83 of the RP Act, learned Senior Counsel emphasized that the expression "any corrupt practice" envisaged in the section encompasses within its fold every kind of corrupt practice under the Act which includes section 33A of the RP Act and therefore, there is no reason to limit or confine the application of the proviso to the corrupt practice enumerated only under section 123 of the RP Act as contended. To buttress the point that the election petitioner is bound by the admission made in the petition, learned Senior Counsel referred to the decision of the Hon'ble Supreme Court of India in the case of *NAGINDAS RAMDAS vs.*

DALPATRAM ICHHARAM @ BRIJRAM & Others, (1974) 1 SCC 242

and stressed on the following punishable namely:

Admissions In pleadings or judicial admission, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

9(iii) Thus contending that the election petitioner has clearly violated the mandatory requirements of section 83 of the R.P. Act and Rule 94A of the Conduct of Election Rules, 1961 sought to sustain the grounds raised in the application.

10. In the light of the contentions urged by the parties, the only question that falls for consideration is:

Whether the election petition as presented to the High Court is liable to be dismissed in limine for

non-compliance of section 81(3) of the Representation of People Act, 1951 read with Rule 94A of the Conduct of Election Rules, 1961?

11. Since the contentions urged by the parties are based on violation of provisions of the RP Act, before delving into the details, it would be necessary to refer to the relevant provisions of the RP Act which deal with the issues raised by the parties. Section 81 of the RP Act deals with presentation of petitions to the High Court. It reads as under:-

81. Presentation of petitions.—(1) *An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the [High Court] by any candidate at such election or any elector [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates].*

Explanation.— In this sub-section, "elector" means a person who was entitled to vote at the election to which the election

petition relates, whether he has voted at such election or not.

*[***]*

*(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [***], and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.*

Section 82 of the RP Act deals with parties to the petition. It reads as under:-

82. Parties to the petition.— *A petitioner shall join as respondents to his petition—*

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

Section 83 of the RP Act which is relevant for our purpose deals with contents of petition. The section reads as under:-

83. Contents of petition.— (1) *An election petition—*

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Since the applicant/respondent No.1 has invoked Rule 94A of the Conduct of Election Rules, 1961 it is extracted herebelow:

"Rule 94A. Form of affidavit to be filed with election petition. – The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25."

12. The above provisions of the Act and the Rules have come up for consideration of the Hon'ble Supreme Court in a catena of decisions and the law is now crystallized that,

"Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read, if the court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the court is required to go into the question and decide the preliminary objection. In case the court does not uphold the same, the need to conduct trial would arise. If the court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the

court is left with no option except to dismiss the same."

13. The test to be applied at the preliminary stage when the election petition is sought to be dismissed for non-compliance of legal requirements laid down in sections 81, 82 and 83 as well as Rule 94 is concerned, in the case of *H.D.REVANNA vs. G.PUTTASWAMY GOWDA & Others AIR 1999 SC 768*, the Hon'ble Supreme Court in para 27 thereof, after analyzing the previous decisions on the subject, laid down that:

"27. The test in all cases of preliminary objection is to see whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. If the answer to the question is in the affirmative, the maintainability of the petition has to be upheld."

In the same decision, in para 14, it is held,

"Section 86 provides for dismissal of election petition in limine for non-compliance of Sections 81, 82 and 117. Section 81 relates to presentation of election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied

with though in the High court a contention was urged that a true copy of the election petition was not served on the appellant and thus the provisions of Section 81 were not complied. Sections 82 and 117 are not relevant in this case. Significantly Section 86 does not refer to Section 83 and non-compliance of Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance of Section 83 may lead to dismissal of the petition only if the matter falls within the scope of O.6, R.16 or O.7, R.11, CPC. Defect in verification of the election petition or the affidavit accompanying election petition has been held to be curable and not fatal."

(underlining supplied)

14. The principles laid down in the above decision were once again reviewed by the Hon'ble Supreme Court in AIR 2001 SC 3924 and in para 5, it is observed,

Dr. Shipra's case, (1996) 5 SCC 181, was referred to, doubted and distinguished in Anil R. Deshmukh, (1999) 2 SCC 205, which also is a three Judge Bench decision. Both these decisions were placed before the Constitution Bench in T.M. Jacob's case. In Dr. Shipra's case, the Constitution Bench decision in Ch. Subbarao

and Murarka Radhey Shyam have been just referred to vide para 10 but not dealt with. In T.M. Jacob's case the Constitution Bench has clearly held that the view taken in Dr. Shipra's case must be confined to the fact situation of that case and cannot be considered to be of general application. The statement of law in Anil R. Deshmukh's case has been approved wherein the copy of the affidavit delivered to the respondent did not bear the endorsement of attestation or the seal or stamp of the attesting officer found on the original. But for the absence of the notarial endorsement, it was a true copy of the original as it was a xerox copy and was attested as 'true copy' under the signature of the election-petitioner. A copy along with notarial endorsement was later on furnished to the respondent. Applying the theories of substantial compliance and of curability this Court held that the election petition was not liable to be dismissed in limine.

(underlining supplied)

15. Thus from the decisions relied on by the learned counsel appearing for the parties it is clear that an election petition can be dismissed in limine under two circumstances viz.,

- (i) for non-compliance of sections 81, 82 and 117 of the RP Act;
and
- (ii) non-compliance of sections 83 only if the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 of CPC.

16. In the instant case, preliminary objections raised by respondent No.1 could be divided into two parts. The first set of objections deal with various defects in the presentation of the petition inasmuch as the petition and the copies furnished to the petitioner are stated to have been not signed by the Advocate and that the index, synopsis and the memorandum of election petition including the verifying affidavit are not signed by the Advocate for the petitioner. The second set of objections concerns non-filing of affidavit in the prescribed form i.e., Form 25 in terms of Rule 94A of the Conduct of Election Rules, 1961.

17. Insofar as the first set of objections are concerned, specific allegations are that the copies furnished to respondent No.1 are not duly signed by the petitioner as well as his Advocate as "true copies" and secondly, the various pages of the election petition, as detailed in clause (b) of para 5 of the

affidavit annexed to the application, do not contain endorsement of the petitioner or his counsel as "true copies". In appreciating this contention, it is relevant to note that the learned counsel for respondent No.1 does not dispute the fact that all pages of the election petition as well as the annexures produced along with the petition contain signatures of the petitioner. I have examined the copies served on respondent No.1, which are produced before this Court along with the application and it is seen that the copies served on respondent No.1 contain signatures of the petitioner or his counsel. Section 83 of the RP Act requires the election petitioner to sign and verify the petition in the manner laid down in the Code of Civil Procedure for verification of the pleadings. Further sub-section (3) of section 81 mandates that, every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Such requirement is seen to have been substantially complied by the petitioner. Undeniably, the election petition is

attested by the petitioner with an endorsement that, "*This is correct copy of the election petition*".

18. In this context, it may be apposite to refer to the principles laid down by the Hon'ble Supreme Court in the Constitution Bench decision relied on by the learned counsel for the election petitioner in *Ch. SUBBARAO vs. MEMBER, ELECTION TRIBUNAL, HYDERABAD & Others, AIR 1964 SC 1027*, wherein considering the identical set of objections raised by the returned candidate's seeking dismissal of the election petition for non-compliance of the requirements of section 81(3) of the RP Act, the Hon'ble Supreme Court has laid down that,

"If there is a substantial compliance with the requirement of Section 81(3), the election petition cannot be dismissed by the Tribunal under S.90(3)."

This view has been consistently followed in the later decisions as well as in the decisions referred to above. Under the said circumstance, the first line of objections raised by respondent No.1 based on various defects highlighted in the application, in my view, cannot be accepted as a ground to dismiss the election

petition at the threshold. The ground (e) set out in para 5 of the affidavit also cannot be construed as a violation of the mandatory requirements of section 81(3) of the RP Act. These objections are based on the defence set out by respondent No.1 and not on defects found in the election petition or the copies furnished to respondent No.1. As a result, the first set of objections raised by respondent No.1 is hereby rejected.

19. Coming to the question of non-filing of Form 25 is concerned, there is no dispute with regard to the factual position that the election petition was not accompanied with the affidavit or Form 25 in terms of section 94A of the Conduct of Election Rules, 1961. Though learned counsel for the election petitioner has sought to justify this lacuna by putting forth an argument that the requirement of filing an affidavit in Form 25 would arise only if the allegations made in the election petition pertain to the corrupt practices envisaged in section 123 of the RP Act, yet, this line of argument cannot be accepted for the reason that the proviso to section 83 of the RP Act mandates that, *where the petitioner alleges any corrupt practice, the petitioner shall also*

be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. The expression "any corrupt practice" and "such corrupt practice" encompasses within its fold all and every type of corrupt practice envisaged under the RP Act. There is nothing in the said proviso to restrict or confine the applicability of the proviso only to the corrupt practices enumerated in section 123 of the RP Act.

20. In the instant case, as rightly pointed out by the learned Senior Counsel appearing for respondent No.1, a reading of the allegations made in the election petition, particularly para Nos.32 and 38 referred above, clearly disclose that the petitioner has alleged undue influence constituting corrupt practice within the meaning of section 123 of the RP Act. That apart, petitioner has sought to challenge the election of the first respondent on the grounds provided under section 100 of the RP Act which also deal with corrupt practices including improper acceptance of any nomination which is the main ground on which the election petitioner has sought to set-aside the election of respondent

No.1. Therefore, the argument advanced by the learned counsel for the petitioner that the allegations made by the petitioner were confined only to section 33A of the Act and therefore, election petitioner was not required to comply with the requirements of Rule 94A of the Conduct of Election Rules cannot be accepted.

21. Having held so, the question now remains for consideration is, *Whether non-compliance of requirement of Rule 94A of the Conduct of Election Rules and not submission of Form 25 by itself can lead to dismissal of the election petition?* In answering this question, a quick reference be made to the decision of the Hon'ble Supreme Court in the case of *PONNALA LAKSHMAIAH vs. KOMMURI PRATAP REDDY & Others*, AIR 2012 SC 2638, wherein the question that fell for determination of the Hon'ble Supreme Court was, *whether the High Court of Andhra Pradesh was right in holding that the election petition filed by respondent No.1 against the appellant who happened to be the successful candidate in the election to the 98-Jangaon Assembly Constituency in the State of Andhra Pradesh, disclosed a cause*

of action and could not therefore be dismissed at the threshold?

Considering the factual objections raised by the successful candidate seeking dismissal of the application especially with reference to the defect in the affidavit in Form 25, the Hon'ble Supreme Court after analyzing the various decisions including the Constitution Bench decision referred above, in para 21 thereof, held as under:

"The decisions relied upon by Mr. Rao do not in terms deal with a comparable situation to the one this Court was dealing with in Sardar Harcharan Singh Brar's case (AIR 2005 SC 22 : 2004 AIR SCW 6205) (supra). The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so."

22. In this case, it must be noted that an affidavit was filed in support of the election petition and another affidavit was also filed under Order VI Rule 15(4) of the Code of Civil Procedure supporting the averments made in election petition and it was urged that two affidavits mentioned above sufficiently complied with the requirements of section 83 of the Act and Rule 94-A of the Conduct of Election Rules, 1961. In that context, the Hon'ble Supreme Court in para 23 of the above decision held that,

"In the absence of any provision making breach of the proviso to Section 83(1), a valid ground of dismissal of an election petition at the threshold, we see no reason why the requirement of filing an affidavit in a given format should be exalted by a judicial interpretation to the status of a statutory mandate. A petition that raises triable issues need not, therefore, be dismissed simply because the affidavit filed by the petitioner is not in a given format no matter the deficiency in the format has not caused any prejudice to the successful candidate and can be cured by the election petitioner by filing a proper affidavit."

23. But in the case before us, election petitioner has not at all filed the affidavit in terms of proviso to section 83(1) of the RP Act, as such, the facts of the case decided by the Hon'ble Supreme Court are distinguishable from the facts involved in the instant case. In this regard, the decision relied on by the learned Senior Counsel appearing for respondent No.1 in the case of *G.M.SIDDESHWAR vs. PRASANNA KUMAR, (2013) 4 SCC 776*, in my view, comes nearer to the facts of this case. In this case, the Three Judge Bench of the Hon'ble Supreme Court considering identical facts laid down the law as under:

"52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold."

(underlining supplied)

24. Insofar as the binding force of the above judgment is concerned, the Full Bench of this Court in the case of *GOVINDANAIK G., Kalaghatigi vs. WEST PATENT PRESS CO. LTD., & Another* reported in *ILR 1979 Karnataka 1401*, relying on the principle laid down by the Hon'ble Supreme Court in *MUTTULAL vs. RADHELAL, AIR 1974 SC 1596* and *UNION OF INDIA vs. K.S. SUBRAMANYAM, AIR 1976 S.C. 2433*, has held as follows:-

"If two decisions of the Supreme Court on a question of law cannot be reconciled and one of them is by a larger Bench while the other is by a smaller Bench, the decision of the larger Bench, whether it is earlier or later in point of time, should be followed by High Courts and other Courts. However, if both such Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other Courts."

25. Thus, from the law declared by the Hon'ble Supreme Court in *G.M. SIDDESHWAR's* case, referred to supra, it is clear that if there is a total and complete non-compliance with the

provisions of section 83 of the RP Act, the High Court has no other option than to dismiss the election petition at the threshold on an objection raised by the returned candidate.

26. The principal contention urged by the learned counsel for the election petitioner that section 86 of the RP Act makes no reference to section 83 thereof and so, *prima facie* an election petition cannot be summarily dismissed under section 86 of the RP Act for non-compliance with proviso to section 83 of the RP Act is also answered in this decision. On considering the entire gamut of case law on the subject, in paras 43 and 44 of the above judgment, the Three Judge Bench of the Hon'ble Supreme Court in *G.M.SIDDESHWAR's* case, referred to *supra*, has held thus:

"43. More recently, the issue was again considered in *PONNALA LAKSHMAIAH vs. KOMMURI PRATAP REDDY*, (2012) 7 SCC 788 and relying upon *SARDAR HARCHARAN SINGH BRAR vs. SUKH DARSHAN SINGH* it was held: (*Ponnala Lakshmaiah case*, SCC p. 799 para 22)

'22. Even otherwise the question whether non-compliance with the proviso to Section 83(1) of the Act is fatal to the election

petition is no longer res integra in the light of a three-Judge Bench decision of this Court in SARDAR HARCHARAN SINGH BRAR vs. SUKH DARSHAN SINGH, (2004) 11 SCC 196. In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance with Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form."

44. *The issue having been considered several times by this Court must now be allowed to rest at that."*

27. In view of the above ratio, law seems to be settled that an election petition cannot be summarily dismissed under section 86 of the RP Act for non-compliance with the proviso to section 83 of the RP Act. However, in the very same decision, the Hon'ble Supreme Court considered another aspect of the contention namely, if the proviso to section 83 of the RP Act is not complied with, whether the election petition can be truly described as an election petition? Considering the principles enunciated in *MURARKA RADHEY SHYAM RAM KUMAR vs. ROOP SINGH RATHORE*, AIR 1964 SC 1545; *T.M.JACOB vs. C.POULOSE*, (1999) 4 SCC 274; *V.NARAYANASWAMY vs. C.P.THIRUNAVUKKARASU*, (2000) 2 SCC 294 and *ANIL VASUDEV SALGAONKAR vs. NARESH KUSHALI SHIGAONKAR*, (2009) 9 SCC 310, the Hon'ble Supreme Court summarized the principles in para 52 of the above judgment laying down that if there is total and complete non-compliance with the provisions of section 83 of the RP Act, the petition may be dismissed at the threshold.

28. The Hon'ble Supreme Court then proceeded to consider, whether an affidavit required to be filed under the

proviso to section 83(1) of the RP Act is an integral part of the election petition and if so, whether the filing of a defective affidavit would be fatal to the maintainability of an election petition? The Hon'ble Supreme Court endorsed the view taken by the Three-Judge Bench of the Hon'ble Supreme Court in *F.A.SAPA vs. SINGORA*, (1991) 3 SCC 375 and observed as under:

"58. *F.A.SAPA vs. SINGORA*, (1991) 3 SCC 375 a three-Judge Bench of this Court reviewed the relevant provisions of the Act, Rule 94-A of the Rules, Form 25, the provisions of CPC as well as the case law and arrived at the following conclusions:

'28. From the text of the relevant provisions of the RP Act, Rule 94-A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better

particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier. Similarly the court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter."

29. Thus the following principles emerge from the above decision:

- (i) ***If there is total and complete non-compliance with the provisions of section 83 of the R.P. Act, then the petition cannot be described as an election petition in the eye of law and it may be dismissed at the threshold;***
- (ii) ***If the defects and compliance of section 83 of the R.P. Act are curable, then the petition***

cannot be dismissed summarily and an opportunity has to be given to the election petitioner to cure the defects;

- (iii) *In order to determine whether the defects are total or complete, the test is to decide in each individual case whether the schedule or annexure referred to in Section 83(2) of the R.P. Act constitute an integral part of the election petition or not.*

30. In the instant case, undisputedly the election petition is filed without an affidavit as required under the proviso to section 83(1) of the R.P. Act. In *M.KAMALAM vs. V.A. SYED MOHAMMED*, (1978) 2 SCC 659, the Hon'ble Supreme Court observed that,

"It would, therefore, be seen that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified, since it forms part of the election petition. The subject-matter of sub-section (2) is thus a schedule or annexure forming part of the election petition and hence it is placed in Section 83 which deals with contents of an election petition. Similarly, and for the same reasons, the affidavit referred to in

the proviso to Section 83, sub-section (1) also forms part of the election petition. The election petition is in truth and reality one document consisting of two parts, one being the election petition proper and the other being the affidavit referred to in the proviso to Section 83, sub-section (1). The copy of the election petition required to be filed under the first part of sub-section (3) of Section, 81, would, therefore, on a fair reading of that provision along with Section 83, include a copy of the affidavit. That is why the appellant attached a copy of the affidavit to the copy of the election petition proper and filed the two as one single document along with the election petition."

(underlining supplied)

31. In *RAVINDER SINGH vs. JANMEJA SINGH & Another*, (2000) 8 SCC 191, para 11, the Hon'ble Supreme Court has laid down that,

"11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election

petition levelling a charge of corrupt practice "is required, by law, to be supported by an affidavit "in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise, in the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial - the defect being of a fatal nature.

32. In the Constitution Bench decision referred to in the preceding para of this judgment namely *SHARIF-UD-DIN vs. ABDUL GANI LONE* in (1980) 1 SCC 403 also, the Hon'ble Supreme court has emphasized the importance of the provisions contained in section 94 of the RP Act and has reiterated that,

"The importance of the provisions contained in Section 94 of the Act which makes it obligatory on the part of the High Court to dismiss a petition when it is established that Section 89 of

the Act had not been complied with also cannot be overlooked in this context."

33. Thus in the light of the law declared by the Hon'ble Apex Court in the various decisions referred to above and in view of the facts and circumstances of this case, I do not have any hesitation to hold that the election petition, as presented to the High Court without an affidavit in Form No.25 in terms of Rule 94A of the Conduct of Election Rules, 1961 is incomplete and cannot be treated as an election petition in the eye of law. As held in the decisions referred above, non-filing of a proper affidavit in support of the allegation of corrupt practice is a total non-compliance of Section 83 of the RP Act. Section 83 of the RP Act not only requires a concise statement of material facts and full particulars of alleged corrupt practice, but also an affidavit in terms of Rule 94A of the Conduct of Election Rules, 1961 in which the election petitioner is obliged to disclose his source of information in support of the commission of corrupt practice. In view of the mandatory requirements of section 83 of the RP Act, non-filing of an affidavit in Form No.25 is an incurable defect of a

fatal nature. As a result, the election petition presented to the High Court in E.P.No.1/2019 is liable to be dismissed as not maintainable.

Accordingly, I.A.No.7/2019 is allowed. Election petition No.1/2019 is held not maintainable for non-compliance of Section 81(3) of the Representation of People Act, 1951 read with Rule 94A of the Conduct of Election Rules, 1961. Consequently, election petition is **dismissed** as not maintainable.

In view of the dismissal of the election petition, all pending I.As. stand dismissed.

Sd/-
JUDGE



TRUE COPY

[Signature] 02/02/2020
Assistant Registrar
High Court of Karnataka
Bangalore - 560 001

[Signature] 3/2/2020
8m
3/2/2020

By
order,

(B C PATRA)

Secretary
Election Commission of India

(K.M. PRANESH)

Assistant Chief Electoral
Officer &
Ex-Officio Under Secretary to
Government(I/c),
D.P.A.R (Elections).